

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

HEIDI C., STUART C., and D.C.,

Plaintiffs,

v.

PREMERA BLUE CROSS, THE
WHITMAN COLLEGE MEDICAL PLAN,
AND WHITMAN COLLEGE,

Defendants.

NO. 2:24-cv-00164

COMPLAINT

Plaintiffs Heid C. ("Heidi"), Stuart C. ("Stuart"), and D.C., through their undersigned counsel, complain and allege against Defendants Premera Blue Cross ("Premera"), the Whitman College medical plan ("the Plan"), and Whitman College as follows:

I. PARTIES

1. **Plaintiffs.** Plaintiffs Heidi C., Stuart C., and D.C. are natural persons. Heidi C. and Stuart C. ("the Parents") are the parents of D.C., who was a minor at all relevant times. The plaintiffs reside in Walla Walla County, Washington. D.C. is diagnosed with mental illness. In 2021, when he was a minor, D.C. received treatment for these severe illnesses at blueFire Wilderness Therapy ("blueFire"), located in Idaho. Although the

1 Plan covers medically necessary services to treat mental illness, Defendants denied all
2 coverage provided by blueFire to D.C. and denied plaintiffs' appeals of the denials of
3 coverage in violation of the terms of the Plan and the Employee Retirement Income
4 Security Act of 1974 ("ERISA").

5 2. ***Defendant Premera.*** Premera is an independent licensee of the nationwide
6 Blue Cross network of providers and was the third-party claims administrator, as well
7 as the fiduciary under ERISA for the applicable Plan during the treatment at issue in this
8 case. Premera is located in King County, Washington and serves residents of
9 Washington. Premera answers benefit questions, makes benefit decisions, and processes
10 appeals under the Plan and, in that capacity, is a fiduciary under ERISA.

11 3. ***Defendant Whitman College medical plan.*** The Plan is a self-funded
12 employee welfare benefits plan under the Employee Retirement Income Security Act of
13 1974, 29 U.S.C. §1001 *et seq.* ("ERISA"). At all relevant times, Stuart C. was a Participant
14 in the Plan, and D.C. was a beneficiary of the Plan. The Plan provides coverage for
15 "mental health care services to manage or lessen the effects of a psychiatric condition"
16 when such services are "consistent with published practices that are based on evidence
17 when available or follow clinical guidelines or a consensus of expert opinion published
18 by national mental health professional organizations or other reputable sources," or,
19 when "[i]f no such published practices apply," that are "consistent with community
20 standards of practice."

21 4. ***Defendant Whitman College.*** Whitman College is a private college located
22 in Walla Walla County, Washington and is the "Plan Sponsor" and "Plan Administrator"
23 and is a fiduciary under ERISA.
24
25
26

II. JURISDICTION AND VENUE

1 5. This Court has jurisdiction over this case pursuant to ERISA §502(e)(1), 29
2 U.S.C. §1132(e)(1), and 28 U.S.C. §1331.

3 6. Venue is appropriate under ERISA §502(e)(2), 29 U.S.C. §1132(e)(2), and 28
4 U.S.C. §1391(c), based on ERISA's nationwide service of process and venue provisions,
5 and because the Plan has a forum selection provision which identifies the State of
6 Washington as the appropriate venue.

7 7. The remedies the Plaintiffs seek under the terms of ERISA and under the
8 Plan are for the benefits due under the terms of the Plan, and pursuant to ERISA
9 §502(a)(1)(b), 29 U.S.C. §1132(a)(1)(B), for appropriate equitable relief under ERISA
10 §502(a)(3), 29 U.S.C. §1132(a)(3), based on the Defendants' violation of the Mental Health
11 Parity and Addiction Equity Act of 2008 ("MHPAEA"), an award of prejudgment
12 interest, and an award of attorney fees and costs pursuant to 29 U.S.C. §1132(g).

III. FACTS

13 8. blueFire is a 24-hour per day outdoor behavioral health treatment facility
14 located in, and licensed by the state of Idaho, that provides intermediate level behavioral
15 health services to children and adolescents.

16 9. D.C. received medically necessary mental health care by and at blueFire
17 from on or about June 21, 2021, through on or about September 16, 2021, and submitted
18 coverage claims to defendants for that treatment.

19 10. By Explanation of Benefit documents dated on or about September 30,
20 2021, Premiera, on behalf of the Plan, denied Plaintiffs' claims for blueFire's treatment of
21 D.C., asserting, *inter alia*, "This provider isn't eligible as defined under the terms of your
22 plan."

23 11. By letter dated March 17, 2022, and through subsequent submissions, the
24 parents appealed defendants' denial decision in accordance with ERISA and the Plan.
25
26

1 12. By letter dated November 10, 2022, Premera, on behalf of the Plan, denied
2 Plaintiffs' appeal and reasserted denial, asserting, *inter alia*, "Your request for payment
3 for services provided to [D.C.] by Blue Fire Wilderness was denied. The claim [was]
4 denied in accordance to [D.C.]'s plan language which states wilderness programs are not
5 covered."

6 13. By letter, submitted to defendants on or about January 3, 2023 (misdated
7 January 3, 2022), which Premera acknowledged it received on January 9, 2023, the
8 parents again appealed defendants' denial decision in accordance with ERISA and the
9 Plan.

10 14. By letter dated February 8, 2023, Premera, on behalf of the Plan, denied
11 plaintiffs' second appeal and again affirmed the Plan's denial of D.C.'s coverage claims,
12 asserting, *inter alia*, "Your request for payment for services provided to [D.C.] by Blue
13 Fire Wilderness was denied because the claims denied correctly in accordance with
14 [D.C.] plan language. The plan language states, this plan does not cover recreational,
15 camp and activity-based programs. These programs are not medically necessary and
16 include: ...Wilderness, hiking, tall ship, and other adventure programs and
17 camps...Blue Fire Wilderness is a wilderness program and therefore is an exclusion and
18 not covered."

19 15. The Plan bases the determination as to whether mental health services are
20 covered on numerous factors, including whether the service is "consistent with
21 published practices that are based on evidence when available or follow clinical
22 guidelines or a consensus of expert opinion published by national mental health
23 professional organizations or other reputable sources," or, "[i]f no such published
24 practices apply, ...consistent with community standards of practice." Contrary to this
25 Plan provision, however, the Plan contains a blanket exclusion of "Recreational, Camp
26

1 And Activity Programs,” including “Wilderness, hiking, tall ship, and other adventure
2 programs and camps,” regardless of the nature of the facility associated with the
3 excluded program.

4 16. The Plan is subject to Paul Wellstone and Pete Domenici Mental Health
5 Parity and Addiction Equity Act of 2008 (“Parity Act”) because the Plan provides
6 coverage for mental health services.

7 17. Under the Parity Act, defendants are prohibited from imposing treatment
8 limitations to mental health benefits that are more restrictive than the “predominant
9 treatment limitations applied to substantially all medical and surgical benefits.”
10 29 U.S.C. §1185a(a)(3)(A)(ii).

11 18. The Plan broadly covers medical and surgical benefits in inpatient,
12 outpatient and residential settings. Intermediate services, which are services somewhere
13 between traditional inpatient and outpatient care, are covered when medical and
14 surgical benefits are sought.

15 19. While the Plan generally covers medical and surgical services when
16 provided in intermediate settings, it excludes wilderness therapy—a form of
17 intermediate therapy to treat mental illness—even when provided by licensed providers.

18 20. The Plan has therefore imposed a nonquantitative treatment limitation—a
19 blanket exclusion—on the scope of intermediate services it covers—medically necessary
20 treatment at outdoor/wilderness behavioral healthcare programs—that is not in parity
21 with the treatment limitations it imposes on comparable intermediate medical/surgical
22 services, such as skilled nursing facilities and rehabilitation hospitals, which are
23 expressly covered. Given this disparity, the Plan has facially employed “processes,
24 strategies, evidentiary standards” and other factors in assessing medically necessary
25 services rendered at outdoor/wilderness behavioral healthcare programs that are
26

1 different from the standards they employ in assessing medically necessary services
2 rendered at skilled nursing facilities and rehabilitation hospitals.

3 21. The application of these uniform exclusions and limitations is not “at
4 parity” with the Plan’s coverage of medical/surgical services. As a result, plaintiffs have
5 paid out of pocket for mental health treatment that should be covered by the Plan.

6 22. The Affordable Care Act’s provider anti-discrimination provision
7 prohibits defendants from discriminating against a provider with respect to
8 participation under the Plan as long as that provider is acting within the scope of the
9 provider’s license or certification under applicable state law. *See* 42 U.S.C. §300gg-5(a);
10 29 U.S.C. §1185d. By denying blueFire’s treatment of D.C., defendants discriminated
11 against the provider(s) in violation of the ACA.

12 23. ERISA requires defendants to follow the terms of the Plan. The Plan’s
13 wholesale exclusion of wilderness programs from coverage is not consistent with the
14 terms of the Plan’s mental health treatment provisions and/or the doctrine of reasonable
15 expectations.

16 24. ERISA requires defendants to administer the Plan in a manner that
17 includes the requirements of laws and regulations. By applying a blanket exclusion of
18 outdoor/wilderness behavioral healthcare programs in violation of the Parity Act and
19 ACA and its regulations, defendants systemically and uniformly failed to properly
20 administer the Plan. Defendants also breached their fiduciary duties to plaintiffs, who
21 have not received the benefits to which D.C. is entitled.

22 25. Defendants’ denial decision was erroneous and arbitrary. Accordingly,
23 plaintiffs ask the Court to order defendants to cover D.C.’s treatment by and at blueFire
24 under the terms of the Plan and in accordance with ERISA.

26. Plaintiffs have completed all steps required prior to the filing of this Complaint under the Plan and ERISA.

IV. CLAIMS

**FIRST CLAIM – FOR BENEFITS AND ENFORCEMENT
OF RIGHTS UNDER ERISA §502(A)(1)(B), 29 U.S.C. §1132(A)(1)(B)**

27. Plaintiffs reallege all paragraphs above.

28. Pursuant to ERISA §502(a)(1)(B), 29 U.S.C. §1132(a)(1)(B), plaintiffs are entitled to enforce their rights under the terms of the Plan.

29. Specifically, and consistent with the terms and conditions of the Plan, plaintiffs seek coverage of all medically necessary behavioral health treatment D.C. received at blueFire.

30. By denying plaintiffs' claim and benefits under the Plan, defendants have violated ERISA §502(a)(1)(B), 29 U.S.C. §1132 (a)(1)(B).

**SECOND CLAIM – FOR BENEFITS AND ENFORCEMENT
OF RIGHTS UNDER ERISA §502(A)(3), 29 U.S.C. §1132(A)(3)**

31. Plaintiffs reallege all paragraphs above.

32. ERISA §502(a)(3), 29 U.S.C. §1132 (a)(3), provides that a participant or beneficiary may “enjoin any act or practice which violates any provision of this subchapter or the terms of the plan” and that a participant or beneficiary may obtain other appropriate equitable relief to redress violations of ERISA or to enforce plan terms. To the extent full relief is not available to plaintiffs under §502(a)(1)(B), 29 U.S.C. §1132(a)(1)(B), pursuant to ERISA §502(a)(3), 29 U.S.C. §1132 (a)(3), plaintiffs seek to enjoin defendants from denying blueFire’s medically necessary mental health treatment and seek all equitable remedies, including, without limitation, injunctive relief and surcharge.

**THIRD CLAIM – FOR ATTORNEY FEES AND COSTS
UNDER ERISA §502(G)(1), 29 U.S.C. §1132(G)(1)**

33. Plaintiffs re-allege all paragraphs above.

34. Plaintiffs are entitled to an award of their attorneys' fees and costs under ERISA §302(g)(1), 29 U.S.C. §1132(g)(1).

V. REQUEST FOR RELIEF

WHEREFORE, plaintiffs request that this Court:

1. Enter judgment in favor of plaintiffs, establishing plaintiffs' right to coverage of blueFire's medically necessary treatment under the terms of the Plan, pursuant to ERISA §502(a)(1)(B), 29 U.S.C. §1132(a)(1)(B);

2. Enter judgment in favor of plaintiffs for damages in an amount to be proven at trial, due to defendants' failure to provide benefits due under the Plan, pursuant to ERISA §502(a)(1)(B), 29 U.S.C. §1132(a)(1)(B);

3. Enter judgment in favor of plaintiffs, enjoining defendants from denying blueFire's medically necessary treatment and ordering defendants to reimburse plaintiffs the full cost of blueFire's treatment through equitable remedies, including, but not limited to, injunctive relief and surcharge, pursuant to ERISA §502(a)(3), 29 U.S.C. §1132(a)(3).

4. Order defendants to pay plaintiffs' attorney fees and costs, pursuant to ERISA §502(g)(1), 29 U.S.C. §1132(g)(1); and

5. Award plaintiffs such other relief as is just and proper.

//

//

//

//

//

//

1 DATED: February 7, 2024.

2 SIRIANNI YOUTZ
3 SPOONEMORE HAMBURGER PLLC

4 /s/ Eleanor Hamburger
5 Eleanor Hamburger, WSBA #26478
ehamburger@sylaw.com

6 /s/ Richard E. Spoonemore
7 Richard E. Spoonemore, WSBA #21833
rspoonemore@sylaw.com

8 3101 Western Avenue, Suite 350

9 Seattle, WA 98121

Telephone: (206) 223-0303

Facsimile: (206) 223-0246

10 MEGAN E. GLOR, ATTORNEYS AT LAW

11 /s/ Megan E. Glor
12 Megan E. Glor, OSB #930178
13 (pro hac vice application to follow)
megan@meganglor.com

14 707 NE Knott Street, Suite 101

Portland, OR 97212

15 Telephone: (503) 223-7400

16 Facsimile: (503) 751-2071

17 *Attorneys for Plaintiffs*